



Agenda Date: 6/21/06
Agenda Item: 2A

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

ENERGY

IN THE MATTER OF THE APPLICATION OF
BOROUGH OF BUTLER ELECTRIC UTILITY
FOR AN ORDER APPROVING A LEVELIZED
ENERGY ADJUSTMENT CLAUSE ("LEAC")
FOR APRIL 1, 2006 TO MARCH 31, 2007

) ORDER ADOPTING
) STIPULATION WITH
) MODIFICATION

DOCKET NO. ER06020115

(SERVICE LIST ATTACHED)

BY THE BOARD¹

The Borough of Butler Electric Utility ("Butler," "Butler Electric," or "Petitioner") is a municipal utility in the County of Morris, State of New Jersey, which is owned and operated by the Borough of Butler and which serves industrial, commercial and residential customers in the Borough of Butler, Boroughs of Bloomingdale and Kinnelon and which partially services the Township of West Milford and the Borough of Riverdale.

On February 1, 2006, Butler Electric filed a petition requesting approval to (1) adjust its Levelized Energy Adjustment Clause ("LEAC") rate from \$0.061046 per kWh to \$0.056989 per kWh to be effective for services rendered on and after April 1, 2006; (2) continue the cap level of \$0.080187 per kWh on the quarterly LEAC adjustment; and (3) continue to implement the LEAC quarterly adjustment rate mechanism as authorized by Board Order dated April 23, 1987, in Docket No. ER8604390², OAL Docket No. PUC 3596-86.

In addition to Butler Electric, the Division of the Ratepayer Advocate ("RPA" or "Ratepayer Advocate"), and Board Staff ("Staff") were parties to this proceeding. The RPA and Staff propounded discovery requests on the Petitioner. Petitioner's responses were received and reviewed by the Ratepayer Advocate and Staff. After settlement negotiations among Butler Electric, the RPA and Staff, on May 11, 2006, the parties executed a Stipulation of Settlement ("Stipulation").

¹ Due to a potential conflict of interest, Commissioner Christine V. Bator did not participate in the vote or deliberations in this matter.

² In the Matter of the Application of the Borough of Butler for an Order Approving a Decrease in its Levelized Energy Adjustment Clause, BPU Docket No. ER8604-390 (April 23, 1987).

STIPULATION

The Stipulation provides for the following:

The Parties agree that Butler Electric's request for a LEAC rate of \$0.056989 per kWh for usage effective April 1, 2006 to March 31, 2007 is reasonable.

Pursuant to Board Order Approving Stipulation, Docket No. ER01010076, dated April 27, 2001, Butler Electric is authorized to continue to implement a LEAC rate as authorized by Board Order, Docket No. ER8604-390, OAL Docket No. PUC 3596-86, dated April 23, 1987. With respect to the annual LEAC rate, the Parties agree as follows:

- a.) Butler Electric's LEAC rate may continue to be adjusted on a quarterly basis during the annual LEAC period.
- b. Each quarterly adjustment shall be calculated to eliminate current year cumulative LEAC over- or under-recoveries over a twelve-month period.
- c. Interest on over-recoveries shall continue to be computed on an annual basis at the prevailing monthly New Jersey Cash Management Fund Interest Rate. Accrued interest from the previous LEAC year will be reflected in each annual filing.
- d.) Unless otherwise altered by the Board, Butler Electric shall have an annual LEAC proceeding that shall be filed February 1 of each year, to be effective as of April 1 of the same year.
- e. Butler Electric's LEAC rate cap of \$0.080187 per kWh applicable to the quarterly LEAC adjustment filing, established by Board Order dated June 10, 2004 in Docket Nos. ER03010049 and ER03010063³ shall continue to be in effect. Butler Electric shall continue to provide financial reports and data to Board Staff and the Ratepayer Advocate to support each quarterly LEAC adjustment at least fifteen (15) days prior to the effective date of the requested adjustment.
- f.) Butler Electric's LEAC costs will remain subject to audit by the Board. This stipulation shall not preclude or prohibit the Board from taking any actions deemed appropriate as a result of any such audit.
- g.) In future LEAC petitions, Butler Electric will base its line loss adjustment on the lower of: the most recent eleven-month average, the most recent twelve-month average, or the average over the past five years. For this case, the Parties agree to calculate the line loss as stated above. The Parties, however, reserve their rights to review line loss adjustment calculations in future LEAC proceedings.

³ In the Matter of the Petition of the Borough of Butler Electric Utility to Increase its Base Rate and Revise its Tariff, BPU Docket No. ER03010049 and In the Matter of the Application of the Borough of Butler Electric Utility for an Order Approving a Levelized Energy Adjustment Clause ("LEAC") for April 1, 2003 to March 31, 2004, BPU Docket No. ER03010063 (June 10, 2004).

- h. The Parties agree that Butler Electric will provide documentation in subsequent LEAC filings that support any new power supply contracts into which it enters, as well as documentation detailing the process by which such power supply contracts have been awarded. The power supply contract documentation is to be supplied as part of the quarterly report covering the period of January through March of the current LEAC year filed on or about December 15th each year, so it will be available for review in the annual filing made by Butler Electric on February 1 of each year. This documentation shall be subject to confidentiality agreements among the parties to the extent legally permissible.

DISCUSSION AND FINDINGS

The Board, having reviewed the attached Stipulation entered into by Butler Electric, the Ratepayer Advocate, and Staff, is satisfied that, with the modifications set forth below, the Settlement represents a fair and reasonable resolution of the issues and is in the public interest. Accordingly, the Board HEREBY ADOPTS the attached Stipulation, with the modifications set forth below, as its own as if it were set forth at length herein. Therefore, the Board HEREBY APPROVES the LEAC rate of \$0.056989 per kWh for services rendered after April 1, 2006. As a result of the Stipulation as adopted herein, a typical residential customer consuming 500 kWh in a month will have an average monthly decrease of \$2.15 or -4.14% compared to January 2006 rates.

The Petitioner also is authorized to continue its quarterly LEAC rate adjustment mechanism, established by Board Order dated April 23, 1987 in Docket No. ER8604390, subject to a cap of \$0.080187 and subject to the provisions of this Order. Because any subsequent quarterly LEAC rate adjustments may result in a LEAC rate increase, the Board ORDERS that, in accordance with N.J.S.A. 48:2-32.4, a public hearing shall be held within two months of this Board Order and prior to implementation of any quarterly rate adjustment which would result in a rate increase. Implementation of any quarterly rate adjustment resulting in an increase shall be subject to the Board's prior review and consideration of any comments presented at the public hearing or in response to the public notice. If there are no comments, quarterly rate adjustments resulting in a LEAC rate increase may be implemented as provided for in the Stipulation and this Order.

The Board FURTHER ORDERS that, because the quarterly LEAC rate adjustment mechanism has the potential to raise LEAC rates, to the extent that in future annual filings Butler Electric seeks Board approval to continue the current LEAC mechanism with quarterly adjustments, a public hearing shall be held by April 1st regardless of whether the annual filing seeks an initial rate decrease. Additionally, the Board HEREBY DIRECTS Butler, when making its annual LEAC filing, to file a public notice as part of the filing as well as a schedule for publication and public hearing consistent with N.J.S.A. 48:2-32.4.

Butler's LEAC costs remain subject to audit by the Board, and approval of the Stipulation shall not preclude nor prohibit the Board from taking any actions deemed appropriate as a result of any such audit.

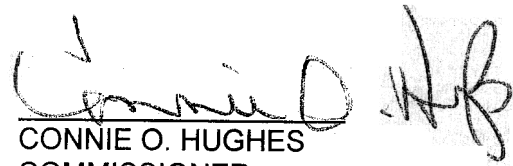
The Board HEREBY DIRECTS the Borough of Butler Electric Utility to file final tariff sheets reflecting the rates which conform to the terms and conditions of this Order within ten (10) days from the date of this Order.

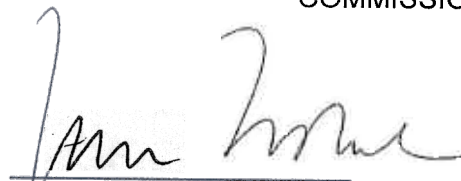
DATED: 6/22/06

BOARD OF PUBLIC UTILITIES
BY:

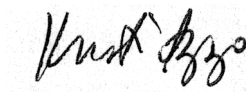

JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

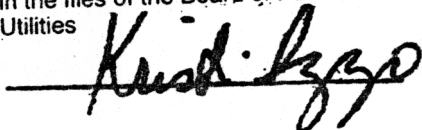

CONNIE O. HUGHES
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



**Borough of Butler Electric Utility
2006 Annual LEAc Filing**

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**Service List
(Continued)**

Beverly Tyndell
Division of Energy (Comp. Svcs.)
New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Jeff Slutzky, DAG
Department of Law and Public Safety
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, New Jersey 07102

Elaine A. Kaufmann, Esq.
Division of Ratepayer Advocate
31 Clinton Street, 11th Floor
Newark, New Jersey 07101

Stacy Peterson
Division of Energy (Comp. Svcs.)
New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

John Stanziola, Executive Director
New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

David H. Evans, C.P.A., R.M.A.
Nisivoccia & Company
5 Emery Avenue
Randolph, New Jersey 07869

James Brown
Division of Energy (Comp. Svcs.)
New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Grace Kurdian, DAG
Department of Law and Public Safety
124 Halsey Way
P.O. Box 45029
Newark, New Jersey 07102

Alice Bator
Division of Energy
New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Fred Grygiel, Chief Economist
New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Henry Ogden, Esq.
Division of Ratepayer Advocate
31 Clinton Street, 11th Floor
Newark, New Jersey 07101

Martin F. Murphy, Esq.
Johnson, Murphy, Hubner, McKeon,
Wubbenhorst, Bucco & Appelt, P.C.
51 Route 23 South
P.O. Box 70
Riverdale, New Jersey 07457

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

In the Matter of the Application of the
Borough of Butler Electric Utility for an
Order Approving a Levelized Energy
Adjustment Clause (LEAC) from April 1, 2006
to March 31, 2007

BPU Docket No. ER06020115

Stipulation of Settlement

TO THE HONORABLE BOARD OF PUBLIC UTILITIES:

This Stipulation of Settlement of the Levelized Energy Adjustment Clause (the "Stipulation") is hereby made and executed by and among the Petitioner, the Borough of Butler Electric Utility ("Petitioner" or "Butler Electric"), the Staff of the Board of Public Utilities ("Staff") and the Division of the Ratepayer Advocate (the "Ratepayer Advocate") (collectively, the "Parties"), in settlement of all factual and legal issues pertaining to Butler Electric in connection with the above-captioned proceeding.

The Parties do hereby recommend that the Board issue a Final Decision and Order approving this Stipulation in the above-captioned matter, based upon the following:

Procedural History. On February 1, 2006, Butler Electric filed with the New Jersey Board of Public Utilities ("Board") a Verified Petition for approval of a Levelized Energy Adjustment Clause ("LEAC") for the period April 1, 2006 to March 31, 2007 under BPU Docket No. ER06020115. Specifically, Butler Electric requested approval to: (1) adjust the LEAC rate from \$0.061046 per kWh to \$0.056989 per kWh to be effective for services rendered on and after April 1, 2006; (2) continue the cap level of \$0.080187 per kWh on the quarterly LEAC adjustment;

and (3) continue to implement the LEAC quarterly adjustment rate mechanism as authorized by Board Order dated April 23, 1987, in Docket No. ER8604-390.

2. In addition to Butler Electric, the Ratepayer Advocate and Staff were parties to this proceeding. The Ratepayer Advocate and Staff propounded discovery requests on the Petitioner. Petitioner's responses were received and reviewed by the Ratepayer Advocate and Staff.

3. Based upon Staff's and the Ratepayer Advocate's review and after settlement discussions by and among Butler Electric, Staff and the Ratepayer Advocate, the Parties have agreed upon the following terms of settlement:

(a) The Parties agree that Butler Electric's request for a LEAC rate of \$0.056989 per kWh for usage effective April 1, 2006 to March 31, 2007 is reasonable.

(b) Pursuant to Board Order Approving Stipulation, Docket No. ER01010076, dated April 27, 2001, Butler Electric is authorized to continue to implement a LEAC rate as authorized by Board Order, Docket No. ER8406390, OAL Docket No. PUC 3596-86, dated April 23, 1987. With respect to the annual LEAC rate, the Parties agree as follows

- 1 Butler Electric's LEAC rate may continue to be adjusted on a quarterly basis during the annual LEAC period.
2. Each quarterly adjustment shall be calculated to eliminate current year cumulative LEAC over- or under-recoveries over a twelve-month period;
3. Interest on over-recoveries shall continue to be computed on an annual basis at the prevailing monthly New Jersey Cash Management Fund Interest Rate. Accrued interest from the previous LEAC year will be reflected in each annual filing;

4. Unless otherwise altered by the Board, Butler Electric shall have an annual LEAC proceeding that shall be filed February 1 of each year, to be effective as of April of the same year.
5. The Petitioner's LEAC rate cap of \$0.080187 per kWh applicable to the quarterly LEAC adjustment filing, established by Board Order dated June 10, 2004 in Docket No. ER03010049 and ER03010063¹ shall continue to be in effect. Butler Electric shall continue to provide financial reports and data to Board Staff and the Ratepayer Advocate to support each quarterly LEAC adjustment filing at least fifteen (15) days prior to the effective date of the proposed adjustment.
6. Butler Electric's LEAC costs will remain subject to audit by the Board. stipulation shall not preclude or prohibit the Board from taking any actions deemed appropriate as a result of any such audit.
7. In future annual LEAC petitions, Butler Electric will base its line adjustment on the lower of the following: the most recent eleven-month average, the most recent twelve-month average, or the average over the past five years. For this case, the Parties agree to calculate line loss as stated above. The Parties, however, reserve their rights to review line adjustment calculations in future LEAC proceedings.
8. The Parties agree that Butler Electric will provide documentation in subsequent LEAC filings that support any new power supply contracts into

¹ In the Matter of the Petition of the Borough of Butler Electric Utility to Increase its Base Rates and Revised its Tariff, BPU Docket No. ER03010049 AND In the Matter of the Application of the Borough of Butler Electric Utility for an Order Approving a Levelized Energy Adjustment Clause ("LEAC") for April 1, 2004 to March 31, 2004, BPU Docket No. ER03010063.

which it enters, as well as documentation detailing the process by which such power supply contracts have been awarded. The power supply contract documentation is to be supplied as part of the quarterly report covering the period of January through March of the current LEAC year filed on or about December 15th each year, so it will be available for review in the annual filing made by Butler Electric on February 1 of each year.

documentation shall be subject to confidentiality agreements among the parties to the extent legally permissible.

4. Entirety of Stipulation. The Parties agree that this Stipulation contains mutual balancing and interdependent clauses and is intended to be accepted and approved in its entirety. In the event any particular aspect of this Stipulation is not accepted and approved in its entirety by the Board, then any Party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right, upon written notice to be provided to all other Parties within ten (10) days after receipt of any such adverse decision, to litigate all issues addressed herein to a conclusion. particularly, in the event this Stipulation is not adopted in its entirety by the Board in its Order in this matter, then any Party hereto is free, upon the timely provision of such written notice, to pursue its then available legal remedies with respect to all issues addressed in this Stipulation, as though this Stipulation has not been signed, and all Parties shall be returned to the position they were in immediately before this stipulation was signed.

5. Binding Effect. The Parties agree that this Stipulation shall be binding on them for all purposes herein.

6. General Reservation. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and, except as otherwise expressly provided for herein:

MAY 10 2006 1 52PM JOHNSON, MURPHY, HUBNER

NO. 8525 P. 2

(a) By executing this Stipulation, no Party waives any rights it possesses under any prior Stipulation, except where the terms of this Stipulation supersede such prior Stipulation.

(b) The contents of this Stipulation shall not in any way be considered, cited or used by any of the undersigned Parties as an indication of any Party's position on any related or other issue litigated in any other proceeding or forum, except to enforce the terms of this Stipulation.

WHEREFORE, the Parties hereto have duly executed and do respectfully submit this Stipulation to the Board and request that the Board issue a Final Decision and Order adopting and approving this Stipulation in its entirety in accordance with the terms hereof.

JOHNSON, MURPHY, HUBNER, McKEON,
WUBBENHORST, BUCCO & APPELT
ATTORNEYS FOR PETITIONER,
BOROUGH OF BUTLER ELECTRIC UTILITY

By: 

Martin F. Murphy, Esq.

SEEMA M. SINGH, ESQ.
RATEPAYER ADVOCATE

By:  5/11/06

Christine Juarez, Esq.
Asst. Deputy Ratepayer Advocate

PETER C. HARVEY,
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR STAFF OF THE
BOARD OF PUBLIC UTILITIES

By: 

Suzana Lencar, Esq.
Deputy Attorney General

Dated